

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RODNEY BRANHAM,
Petitioner,

v.

Case No. 2:03-CV-222

PATRICIA CARUSO,
Respondent.

Hon. Richard Alan Enslen

ORDER

/

Petitioner Rodney Branham has moved for a certificate of appealability regarding this Court's July 24, 2007 denial of his Motion pursuant to Federal Rule of Civil Procedure 60(b)(6) for relief from a Final Order entered on January 6, 2006 denying his Petition for Writ of Habeas Corpus. Rule 60(b)(6) relief was denied by the July 24, 2007 Order because Petitioner failed to show prejudice to the adjudication of his Petition, let alone "exceptional circumstances" as required by the Rule 60 precedent. *See Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 387 (6th Cir. 2001); *Blue Diamond Coal Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001). Although the United States Supreme Court in *Gonzalez v. Crosby*, 545 U.S. 524, 535 n.7 (2005) failed to decide whether a certificate of appealability was needed as to a denial of Rule 60 relief, it suggested that the dominant circuit practice of so requiring was appropriate. As such, the Court will follow that practice in this suit.

Issuance of a certificate of appealability is governed by 28 U.S.C. § 2253 and the standards announced by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) and *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). Accordingly, a certificate is to be issued if the legal

decision is debatable among reasonable jurists or the appeal deserves encouragement for some other reason. Upon review of the Petitioner's Rule 60(b) Motion and the Order denying it, the Court determines that the standard for issuance of a certificate is not met.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Rodney Branham's Motion for Certificate of Appealability (Dkt. No. 121) is **DENIED**.

DATED in Kalamazoo, MI:
August 20, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE